

**INTERLOCAL AGREEMENT BETWEEN LEON COUNTY AND WAKULLA
COUNTY REGARDING WAKULLA COUNTY COMPREHENSIVE PLAN
AMENDMENT 03-1**

This Interlocal Agreement ("Agreement") is made and entered into as of this day of day of....., 2006, by and between Leon County, Florida, a charter county and political subdivision of the State of Florida (hereinafter "Leon County") and Wakulla County, Florida, a political subdivision of the State of Florida (hereinafter "Wakulla County").

RECITALS

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, Florida, local governments may adopt Comprehensive Plan Amendments; and,

WHEREAS, local governments are required to adopt Comprehensive Plan Amendments that are "in compliance" with all aspects of Chapter 163; and,

WHEREAS, the State of Florida, Department of Community Affairs (hereinafter "DCA"), is the state land planning agency and is authorized to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes. This includes the power to determine whether Comprehensive Plan Amendments are in compliance with Chapter 163, Part II, Florida Statutes; and,

WHEREAS, Wakulla County adopted Comprehensive Plan Amendment 03-1 (hereinafter "Plan Amendment") by Ordinance No. 2003-23, Amended Ordinance 2005-01, and Ordinance 2005-59, and,

WHEREAS, Leon County is an adjacent county to Wakulla County, as used in Chapter 163, Part II, Florida Statutes; and,

WHEREAS, N.G. Wade Investment Company, Inc. is the Intervenor in Division of Administrative Hearings Case Nos. 03-4516GM and 05-1249GM and developer of the Sustainable Community as defined herein; and,

WHEREAS, DCA issued a Statement of Notice of Intent regarding Wakulla County Ordinance No. 2003-24, on or about November 26, 2003, finding the Plan Amendment "not in cotnpliance"; and,

WHEREAS, DCA's Notice and Statement of Intent found that the Plan Amendment was "not in compliance." The Plan Amendment was not in compliance for a number of reasons, including, but not limited to 1) its failure to include sufficient data and analysis regarding roadway levels of service, 2) its failure to coordinate with Leon County pursuant to Wakulla County's Interlocal Coordination Element Policies, and 3) its inconsistency with other Goals, Objective, and Policies within the Wakulla County Comprehensive Plan; and,

WHEREAS, DCA initiated a formal administrative proceeding challenging Wakulla County's Plan Amendment pursuant to section 163.3184(10), Florida Statutes (2003) with the Division of Administrative Hearings; and,

WHEREAS, Wakulla County disputed the allegations its Plan Amendment was not in compliance; and,

WHEREAS, DCA and Wakulla County, and later Leon County and Wakulla County, entered into settlement agreements because they believe the conflict between them is better resolved through negotiation and agreement rather than litigation; and,

WHEREAS, the parties to this Agreement agree that should either party breach this Agreement or should the Agreement be terminated pursuant to Section 5 of the Agreement, both parties specifically reserve the right to put forth their legal arguments previously articulated, and nothing herein shall be deemed to be a waiver thereof; and,

WHEREAS, the Future Land Use Policy , 1.2.9.1(k)5 ,(Northeast Wakulla County Sustainable Community) states:

By January 15, 2006, Wakulla County shall develop an interlocal agreement with Leon County that addresses how the two counties will coordinate to study and resolve the anticipated transportation impacts on the Woodville Highway Corridor (SR 363) from the Sustainable Community Development as identified in Policy 1.2.9.1.b, and,

WHEREAS, Leon County and Wakulla County (hereinafter collectively referred to as the "parties") desire to develop the aforementioned interlocal agreement and to enter into an Agreement of understanding to delineate their areas of responsibility with respect to this Interlocal Agreement, the Plan Amendment and Wakulla County's obligations and responsibilities with respect to the adoption and implementation of the Plan Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, Leon County and Wakulla County do hereby agree as follows:

SECTION 1. AUTHORITY

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the parties under the Constitution and the laws of the State of Florida, including expressly, but not limited to the authority of section 163.01, Florida Statutes, and the Act.

SECTION 2. DEFINITIONS

Unless otherwise defined herein, the following words and phrases shall have the following meanings:

- a. "DCA" means the Florida Department of Community Affairs, or its successor, a public body corporate and politic;
- b. "Development" means 606+/- acres designated as the Sustainable Community in Comprehensive Plan Amendment 03-1 adopted by Wakulla County Ordinance No. 2003-23, on or about October 6, 2003;
- c. "Act" means the Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II of Chapter 163, Florida Statutes (2003);
- d. "Agreement" means this document and other terms and conditions which are included and the exhibits and documents are expressly incorporated herein by reference;
- e. "Effective Date" means the date upon which the last party to this Agreement has fully executed same in accordance with the formalities imposed upon such entity required by Florida Law;
- f. "In compliance" has the meaning set forth in section 163.3184(1)(b), Florida Statutes;
- g. "Party" or "parties" mean Leon County and/or Wakulla County, political subdivisions of the State of Florida; and
- h. "Plan Amendment" means Comprehensive Plan Amendment 03-1 adopted by Wakulla County Ordinance No. 2003-23, Amended Ordinance 2005-01, and Ordinance 2005-59,

SECTION 3. WOODVILLE HIGHWAY CORRIDOR TRAFFIC DENSITY.

a. Wakulla County and Leon County agree to complete a traffic analysis of the traffic that will be created by the Development and generated by the change in land use and the impact from the change in land use on the surrounding roadway system and its operating level of service. The analysis shall, at a minimum, (1) consider the approved development potential and resulting traffic impacts associated with the change in land use; (2) use the p.m. Peak Hour period of analysis; (3) continue the distribution and trip assignment into Leon County and determine the impact of those trips upon Leon County; (4) address the need for road improvements (scope, timing, cost and funding of improvements) to maintain the mutually agreed upon level of service standards for the affected roadways; and (5) address the needed coordination of road improvements with the Traffic Circulation and Capital Improvements Elements of the Wakulla Comprehensive Plan, and (6) to assist in this planning effort, a method will be established whereby concurrency data will be shared between the two counties for all approved developments. Wakulla County and Leon County agree to consider the findings of the traffic analysis done by the two counties in all development approvals affecting the Woodville Highway corridor

b. Wakulla County shall address inter-county impacts attributable to this Sustainable Community along the Woodville Highway Corridor through developer mitigation. Additionally, such inter-county impacts may be addressed through participation in local

coordinative programs in accordance with the findings of the traffic analysis developed by the two counties under Section 3, paragraph a.

c. The parties agree upon the need to adopt a level of service standard that is agreeable to both Counties, and which does not overburden the Woodville Highway Corridor and surrounding service roads in Leon County. The parties further agree to abide by the recommendation of CRPTA as to the appropriate level of service standard for the Woodville Highway Corridor.

d. Under no circumstances shall the internal vehicle capture rate for the proposed development drop below 15% or 10% with the provision of a comprehensive system of interconnected pedestrian and bicycle ways, for trips during peak evening hours. The internal capture rate shall be measured periodically, but not less often than every twelve (12) months. Wakulla County shall be responsible for measuring or causing to be measured the internal vehicle capture rate using a mutually agreed upon methodology of measurement. In the event the internal capture rate is found to be below 15% or 10% with the provision of a comprehensive system of interconnected pedestrian and bicycle ways, during two consecutive measurement periods, it is agreed that further development within the Development shall be stayed for a period not to exceed twelve (12) months.

e. Wakulla County shall conduct an evaluation of its hurricane evacuation plan and consider any impact thereon by the proposed Development. The evaluation shall identify the traffic volume generated by the Development at each proposed phase of the Development and address the impact of the additional trips upon the critical roadway locations and segments, including Woodville Highway and any related roadways within Leon County.

f. Wakulla County shall participate in CRTPA and CRTPA Planning Process to develop a Long Range Transportation Plan ("LRTP"), to address issues within the Wakulla Highway Corridor, including, but not limited to potential improvements and non-automotive transportation opportunities.

g. Wakulla County shall coordinate with CRTPA and the Florida Department of Transportation ("DOT") by June 30, 2006 to conduct an analysis of the Woodville Highway Corridor to determine what short and long-term improvements will be needed to maintain the adopted level of service, including, but not limited to, consideration of development of additional intercounty links.

h. Wakulla County shall establish a Transit/Transportation Demand Management ("TDM") plan as required by Transportation Policy set forth in Transportation Policy 1.5 by June 30, 2006. Wakulla County shall make provisions for implementing Transit/TDM measures, including, but not limited on-site park and ride facilities, implementation of measures identified in the Transit/TDM plan when developed, and incorporation of pedestrian and transit friendly design considerations. The Transit/TDM program shall also consider the following:

1. Parking management provisions, including parking areas and preferential parking for vanpooling purposes;
2. Mandatory display of transit and current ridesharing information in all public gathering areas, in employment centers, and in commercial areas;
3. Work hour adjustments such as: compressed work weeks, staggered work hours involving a shift in the work hours or employees, and flexible work hours involving individually determined work hours within guidelines established by the employer;
4. Facilitation of increased in non-automotive transit services and implementation of a shuttle service;
5. Establishment of a program to help coordinate ride sharing, transit information and use, flex time, telecommuting, and traffic condition reporting;
6. County promotion of the use of non-automotive transit service through fare discounts as applicable;
7. Require consideration of dedicated easements and improved pathways for use by bicyclists and pedestrians in all development plans in the Sustainable Community land use category; and
8. Identification of methods to implement the Transit/TDM Program.

i. Wakulla County shall revise its Comprehensive Plan by December 1, 2006 to include a projected future transportation circulation map and other revisions as applicable to ensure consistency with the requirements of Florida Administrative Code 9J-5.019(4) and (5), and to implement Wakulla County's transportation concurrency management system.

j. Wakulla County shall demonstrate to Leon County there are adequate public facilities available to service growth resulting from the Plan Amendment and/or the Development. Each phase of the Development will require proof that there is an adequate provision of public facilities and services for the then existing Woodville Highway Corridor and the Development. These phases shall also be monitored to ensure compliance with the adopted roadway levels of service as implemented through the Wakulla County concurrency management process.

k. Wakulla County shall, by June 30, 2006, complete a transportation analysis and scheduling of appropriate short-term and long-term transportation improvements that address identified deficiencies in the Wakulla roadway network. No additional Future Land Use map amendments shall be adopted within the Woodville Highway Corridor (SR 363) within Wakulla County until the analysis and scheduling is complete.

SECTION 4. OTHER REMEDIAL ACTIONS.

Wakulla County must comply with the Stipulated Settlement Agreement and Settlement Agreement filed in Division of Administrative Hearing Case Nos. 03-4516GM and 05-1249GM, including, but not limited to taking all remedial actions require by said agreements and obtaining a cumulative Notice of Intent addressing both the Remedial Plan Amendment and initial Plan Amendment adopted by Wakulla County.

SECTION 5. EFFECTIVE DATE AND TERM.

The term of this Agreement shall commence upon the Effective Date, and shall end upon completion of its terms, however, in no event to exceed twenty (20) years from the Effective Date, unless earlier terminated pursuant to Section 6 of this Agreement.

b. This Agreement is non-terminable and non-cancelable during its term, and any amendments thereto, except as provided in Section 6 of the Agreement.

c. In the event that the Sustainable Community is not built or is substantially modified the parties agree to re-address the grounds for appropriate termination of this Agreement.

SECTION 6. TERMINATION.

a. If any Party fails to comply with any terms or conditions of this Agreement or default in any of its obligations under this Agreement, and shall fail within thirty (30) calendar days after written notice to the non-compliant party to correct such default or non-compliance, the non-defaulting party, at its option may forthwith terminate this Agreement.

b. The grounds for termination and the remedy set forth in this Section are intended to be cumulative with those set forth in other paragraphs in this Agreement, as well as those otherwise available to the parties at law or at equity.

SECTION 7. DISPUTE RESOLUTION.

a. The parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Paragraph. The provision of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process is hereby set forth in this Section. The aggrieved party shall give written notice to the other party, in the manner set forth in Section 8.d., setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice."

b. Should the parties be unable to reconcile any dispute, DCA, County personnel, and N.G. Wade Investment Company, Inc. shall meet at the earliest opportunity, but in any event within ten (10) days from the date that the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, they shall report their decision, in writing, to the respective County Administrators. If they are unable to reconcile their dispute, they shall report their impasse to the appropriate County office who shall then convene a meeting of the parties at their earliest opportunity, but in any event within 20 days following receipt of a Dispute Notice, to attempt to reconcile the dispute

c. If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the parties, then either party may require the dispute to be submitted to mediation by delivering written notice thereof

(the "Mediation Notice") to the other party. The mediator shall meet the qualifications set forth in Rule 10.010(c), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the parties. The costs of the mediator shall be borne equally by the parties.

d. If an amicable resolution of a dispute is not been reached within sixty (60) calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the parties, then such dispute may be resolved by the filing of a lawsuit in Wakulla County Circuit Court.

SECTION 8. GENERAL PROVISIONS.

a. Assignment. The parties shall not assign any portion of this Agreement without written consent first obtained from the other parties and any assignment made contrary to the provisions of this paragraph may be deemed a default of the Agreement and, at the option of the other parties, shall not convey any rights to the assignee.

b. Compliance with Applicable Law. In providing services and otherwise carrying out its obligations under this Agreement, the parties shall comply with Applicable Law. Such compliance shall include obtaining any and all federal, state, or local permits or licenses required to perform its obligations under this Agreement.

c. Non-waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.

d. Notice. If written notice to a party is required under this Agreement, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, to Leon County as follows:

Leon County
Administrator Leon
County Courthouse 301
South Monroe Street
Tallahassee, Florida 32301

and to Wakulla County as follows:

Wakulla County Administrator

3093 Crawfordville Highway

e. Choice of Law, Venue, and Severability. This Agreement shall be construed and interpreted in accordance with Florida Law. Venue for any action brought in relation to this Agreement shall be placed in a court of competent jurisdiction in Leon or Wakulla County, Florida. If any provision of this Agreement is subsequently held invalid, the remaining provisions shall continue in effect.

f. Amendment. Neither this Agreement, nor any portion of it may be modified or waived orally. The provisions hereof may be amended or waived only pursuant to an instrument in writing, approved by the Leon and Wakulla County Boards of County Commission, and jointly executed by the parties hereto. This Agreement shall be enforced and be binding upon, and inure to the benefits of, the parties hereto and their respective successors and assigns, if any. Any party to this Agreement shall have the right, but not obligation, to waive any right or rights, limitation or limitations, or condition or conditions herein reserved or intended for the benefit of such party without being deemed to have waived other rights, limitations, or conditions. However, any such waiver shall be valid only if expressly granted in writing as described above.

g. Third Party Beneficiary. This Agreement is solely for the benefit of Leon and Wakulla Counties, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement, either express or implied is intended or shall be construed to confer upon or give any person, corporation, or governmental entity or agency, other than the parties hereto, any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

h. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should a material term, provision, covenant, or condition of this Agreement be held unenforceable by a Court of competent jurisdiction, the party protected or benefitted by such term, provision, covenant, or condition, may demand that the parties negotiate such reasonable alternative contract language or provisions as may be necessary either to restore the protected or benefitted party to its previous position, or otherwise mitigate the loss of protection or benefit resulting from the mitigation.

i. Litigation. In exchange for the full compliance of the terms and conditions of this Agreement, Leon County agrees to cease prosecution of Division of Administrative Hearings Case Nos. 03-4516GM and 05-1249GM with each party to pay its own attorneys fees and costs.

j. Indemnification. To the extent permitted by law, each party agrees to indemnify, defend and hold harmless the other party, its officials, officers, and employees, from and against all liabilities, damages, costs and expenses, including but not limited to a reasonable attorney's fee, to the extent that same are caused by the negligent or wrongful acts or omissions of the indemnifying party, or its officials, officers, or employees, in the performance of this Agreement. The liability of each party, as set for the in this paragraph, is intended to be consistent with limitations of Florida law, including the State's waiver of sovereign immunity pursuant to section 768.28, Florida Statutes. No obligations imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of a party beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which the indemnifying party may be entitled.

IN WITNESS WHEREOF, the parties cause this Interlocal Agreement to be executed by their duly authorized representatives this _____ day of....., 2005.

Approved as to form:

By: Ronald A. Mowrey, Esq.
County Attorney

WAKULLA COUNTY, FLORIDA

Attachment # 6
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By: _____

Attest:

By:

Approved as to form:

By: Herbert W.A. Thiele, Esq.
County Attorney

LEON COUNTY, FLORIDA

By: _____

Attest: by: _____